

Automatic Stay - Rental Deposits
11 U.S.C. § 362(l)(1)
BR Act Section 311

This section adds a new exception to current automatic stay provisions regarding leases, as well as limitations to this new exceptions and remedial actions available to the debtor. This exception to the automatic stay applies to any eviction or similar proceeding against a debtor tenant if the landlord has obtained a judgment for possession of the leasehold prior to the date of the filing of the petition.

- I. Petition will indicate whether pre-petition judgment for possession has been obtained;¹
- II. Requirements at time of filing:
 - A. Debtor must deposit, with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition:
 - (i) If deposited by the Debtor, the payment must be submitted in cash, money order or by bank debit card;
 - (ii) If deposited by Debtor's attorney, all typical forms of payment will be accepted, including pay.gov. Although pay.gov funds go directly into the Treasury, they can be reclassified as court funds once the court is notified of the deposit via the CASH LINK system.
 - (iii) The funds should be deposited into the court's deposit account (specific procedures will be forthcoming from the AO's Accounting Division.)
 - B. Debtor needs to file the first required certification under section 362(l)(1), indicating:
 - (i) that a pre-petition judgment was obtained;
 - (ii) that the debtor would be permitted to cure, under applicable non-bankruptcy law (i.e., state landlord-tenant law), the entire monetary default which gave rise to the judgment for possession; and

¹ It is anticipated that the new petition form will capture this information.

- iii. the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period subsequent to the filing of the bankruptcy petition.
- III. The clerk of the court “shall arrange for the prompt transmittal to the lessor of the rent so deposited.” (In most bankruptcy courts, the certifying officer shall certify that the funds can be released; the actual check will have to be disbursed by the local district court. The Accounting Division will be issuing guidance on specific procedures on disbursement of funds.)
- IV. Second Required Certification of Debtor under section 362 (1)(2)
 - A. Within 30 days of filing of the petition, the debtor (or an adult dependent of the debtor), must file with the court and serve on the lessor a certification, indicating:
 - i. that the debtor has cured, under applicable non-bankruptcy law, the entire default at issue.
 - B. If the debtor fails to file either required certification, the court shall serve on the lessor and the debtor a certified copy of the docket, indicating the absence of the required certification².
- V. If the lessor files an objection to either certification, the court shall hold a hearing, within 10 days of the filing and service of such objection, to determine the veracity of the certification(s).
- VI. If the court upholds the lessor’s objection, the clerk shall immediately serve a certified copy of the court’s order on the lessor and the debtor.

² The Bankruptcy Reform Working Group is of the opinion that “serve” in these provisions to mean “give notice of” – the court does not effect service in the manner of parties. In addition, although the copy must be certified, the clerk should not impose a fee for the certification, as it is not on request of the debtor, but rather, must be done pursuant to the statute.